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Attorney for Plaintiff

THE VILLAGE NEIGHBORHOOD  
ASSOCIATION,

Plaintiff,

vs.

THE ZONING BOARD OF  
ADJUSTMENT OF THE CITY OF  
JERSEY CITY and EP BRUNSWICK JC  
GROUP LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-HUDSON COUNTY

Docket No.

CIVIL ACTION

COMPLAINT IN LIEU OF  
PREROGATIVE WRITS

The plaintiff, The Village Neighborhood Association, located in the City of Jersey City, County of Hudson and State of New Jersey, complaining of the defendants, says:

### **FACTS COMMON TO ALL COUNTS**

1. The plaintiff, The Village Neighborhood Association, is a New Jersey nonprofit corporation dedicated to serving “The Village” neighborhood in Downtown Jersey City, which encompasses the area from Christopher Columbus Drive to 6<sup>th</sup> Street and from Coles Street to the Turnpike extension.

2. The Zoning Board of Adjustment of the City of Jersey City (“Zoning Board”) is a zoning board constituted to act as such under the Municipal Land Use

Law, N.J.S.A. 40:55D-1 *et seq.*

3. The defendant, EP Brunswick JC Group LLC (the “EP Brunswick”), filed an application with the defendant Zoning Board seeking various variances, pursuant to N.J.S.A. 40:55D-70, for premises known as 141-143 Brunswick Street and designated as Lots 11, 13 & 16 of Block 11002 on the City of Jersey City Tax Map.

3. The intent of the application is to construct a five-story building with ground floor commercial space and thirty (30) residential units above the ground floor.

4. The premises in question are located in the R-5 Low Rise Residential Mixed-Use Zone in the City of Jersey City.

5. The Zoning Board heard the application on October 18, 2018.

6. On December 6, 2018, the Zoning Board adopted a resolution to memorialize its action taken October 18, 2018. Publication was made in the Jersey Journal on December 14, 2018.

7. The plaintiff files this action in lieu of Prerogative Writs seeking to reverse the action taken by the Zoning Board alleging that the defendant applicant, EP Brunswick, failed to meet its burden of proof and that the action of the Zoning Board was arbitrary, capricious or unreasonable.

**FIRST COUNT**  
**(d-6 Height Variance)**

8. The plaintiff repeats the allegations set forth in paragraphs 1 through 7 and makes the same a part hereof.

9. The R-5 Zone requires a Maximum Building Height for proposed development of four (4) stories, forty-two (42) feet on streets with a sixty-foot right-of-way or larger. On streets with less than a sixty-foot right-of-way, height is limited to three (3) stories with the fourth story set back a minimum of fifteen (15) feet with a total height limit of forty-two (42) feet.

10. Inasmuch as the proposed structure of the applicant will exceed that standard, N.J.S.A. 40:55D-70(d) requires the applicant to establish “special reasons” to justify the d-6 height variance.

11. The applicant failed to meet its burden of proof.

12. Therefore, the action of the Defendant Zoning Board in approving the application was arbitrary, capricious or unreasonable.

WHEREFORE, the plaintiff seeks judgment as follows:

A. An order declaring the resolution adopted by the Defendant Zoning Board on December 6, 2018, as being null and void.

B. An order denying the application of the Defendant EP Brunswick.

C. Such other relief as the Court may deem just.

### **SECOND COUNT (d-5 Density Variance)**

13. The plaintiff repeats the allegations set forth in paragraphs 1 through 12 and makes the same a part hereof.

14. The maximum density in the R-5 Zone is eighty (80) units an acre.

15. Inasmuch as the proposed structure of the applicant will exceed that standard, N.J.S.A. 40:55D-70(d) requires the applicant to establish to establish “special reasons” to justify the d-5 density variance.

16. The applicant failed to meet its burden of proof.

17. Therefore, the action of the Defendant Zoning Board in approving the application was arbitrary, capricious or unreasonable.

WHEREFORE, the plaintiff seeks judgment as follows:

- A. An order declaring the resolution adopted by the Defendant Zoning Board on December 6, 2018, as being null and void.
- B. An order denying the application of the Defendant EP Brunswick.
- C. Such other relief as the Court may deem just.

**THIRD COUNT  
(Building and Lot Coverage Variances)**

18. The plaintiff repeats the allegations set forth in paragraphs 1 through 17 and makes the same a part hereof.

19. The bulk standards in the R-5 Zone require a maximum building coverage of seventy percent (70%) and a maximum lot coverage of eighty percent (80%). The applicant wishes to construct a building with 97.3% building and lot coverages.

20. Inasmuch as the proposed structure of the applicant will exceed those standards, N.J.S.A. 40:55D-70(c) requires the applicant to justify the ‘c’ variances

by establishing hardship or that the benefit of granting the variances substantially outweighs the detriment.

21. The applicant failed to meet its burden of proof.

22. Therefore, the action of the Defendant Zoning Board in approving the application was arbitrary, capricious or unreasonable.

WHEREFORE, the plaintiff seeks judgment as follows:

A. An order declaring the resolution adopted by the Defendant Zoning Board on December 6, 2018, as being null and void.

B. An order denying the application of the Defendant EP Brunswick.

C. Such other relief as the Court may deem just.

**FOURTH COUNT  
(Parking Variance)**

23. The plaintiff repeats the allegations set forth in paragraphs 1 through 22 and makes the same a part hereof.

24. The Parking Standards in the R-5 Zone prohibit parking on lots on Brunswick Street and on lots less than 40 feet wide elsewhere such that parking is entirely prohibited on the site. The proposed structure contains 15 parking spaces.

25. Inasmuch as the proposed structure of the applicant will exceed those standards, N.J.S.A. 40:55D-70(c) requires the applicant to justify the 'c' variances by establishing hardship or that the benefit of granting the variances substantially outweighs the detriment.

26. The applicant failed to meet its burden of proof.

27. Therefore, the action of the Defendant Zoning Board in approving the application was arbitrary, capricious or unreasonable.

WHEREFORE, the plaintiff seeks judgment as follows:

A. An order declaring the resolution adopted by the Defendant Zoning Board on December 6, 2018, as being null and void.

B. An order denying the application of the Defendant EP Brunswick.

C. Such other relief as the Court may deem just.

**FIFTH COUNT  
(Substantial Impairment of Zoning Ordinance)**

28. The plaintiff repeats the allegations set forth in paragraphs 1 through 27 and makes the same a part hereof.

29. The newly-implemented R-5 Zone is a low-rise zone that restricts height and density, limits lot and building coverage and prohibits parking on this site.

30. N.J.S.A. 40:55D-70 states “No variance or other relief may be granted ...without a showing that such variance or other relief ... will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.”

31. Neither the applicant nor the Zoning Board made a “showing” as to why the variances required for the proposed structure would not substantially impair the zone plan and the zoning ordinance.

32. Therefore, the action of the Defendant Zoning Board in approving the application was arbitrary, capricious or unreasonable.

WHEREFORE, the plaintiff seeks judgment as follows:

- A. An order declaring the resolution adopted by the Defendant Zoning Board on December 6, 2018, as being null and void.
- B. An order denying the application of the defendant EP Brunswick.
- C. Such other relief as the Court may deem just.

Dated: 1/28/19



Cynthia A. Hadjiyannis. Esq.  
Attorney for Plaintiff  
The Village Neighborhood Association

DESIGNATION OF TRIAL ATTORNEY

Cynthia A. Hadjiyannis is hereby designated as trial attorney in this matter.



Dated: 1/28/19

Cynthia A. Hadjiyannis. Esq.  
Attorney for Plaintiff  
The Village Neighborhood Association

RULE 4:5-1(b)(2) CERTIFICATION

I hereby certify the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding; that no other or action or arbitration proceeding is contemplated; and, that all necessary and indispensable parties have been made parties to this suit.



Dated: 1/28/19

Cynthia A. Hadjiyannis. Esq.  
Attorney for Plaintiff  
The Village Neighborhood Association

RULE 4:69-4 CERTIFICATION

I certify that a copy of the transcript of the proceedings before the Zoning Board has been obtained from the Division of City Planning.



Dated: 1/28/19

Cynthia A. Hadjiyannis. Esq.  
Attorney for Plaintiff  
The Village Neighborhood Association